IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.413 of 2006
Date of decision:16.11.2006

Varinder Agro Chemicals Limited

....Appellant

versus

The Commissioner of Income Tax, Central Circle, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: None for the appellant.
Mr. SK Garg Narwana, Advocate, for the revenue.

JUDGMENT:

This appeal has been preferred by the assessee against the order dated 9.12.2005 passed by the Income Tax Appellate Tribunal, Chandigarh, Bench 'A' Chandigarh (for short, 'the Tribunal) in MA No.247/Chandi/2005 in ITA No.820/CHD/01, for the assessment year 1998-99, proposing following substantial questions of law:-

"i) Whether in the facts and circumstances of the case, the order of the Tribunal is perverse as the Tribunal has not allowed the assessee to raise the additional ground which has been conducted in favour of the assessee in all preceding years?

ii) Whether in the facts and circumstances of the case, the order of the Tribunal is contrary to the ratio of the Supreme Court in National Thermal Corporation v. CIT?

Iii) Whether in the facts and circumstances of the case, the Tribunal has failed to exercise a jurisdiction vested in it by not allowing the assessee to raise the additional issue before the Tribunal?"

The assessee received sales tax subsidy in the form of sales tax exemption by the State of Punjab and claimed the same to be capital receipt.

During the assessment year 1998-99, the Assessing Officer made additions on account of dividend received and disallowed interest on interest free loans given to sister concern. Addition was also made on account of interest income of which exclusion was claimed under section 80 (I) of the Income tax Act, 1961 (for short, 'the Act'). Further disallowance was made in respect of contribution made to Chief Minister's Relief Fund. The CIT(A) deleted disallowance of interest and modified deduction under section 80(I)(A) of the Act and gave benefit on profits after adjusting brought forward depreciation and business losses. Sales tax subsidy was treated as revenue receipt.

The Tribunal did not deal with the prayer for additional issue on sales tax subsidy for which rectification was sought. Though, the application was allowed to the extent that prayer for additional issue was not dealt with while passing the order but on merits finally the assessee was not permitted to raise the additional issue.

Contention raised in the appeal is that additional ground ought to have been allowed in view of judgment of the Hon'ble Supreme Court in **National Thermal Power Corporation Company Limited v. CIT**, (1998) 229 ITR 383.

We have heard learned counsel for the revenue and perused the findings recorded.

It is not disputed between the parties that identical issues have been gone into by this Court while deciding ITA No.373 of 2005 on 17.8.2006 in the case of the assessee, wherein the assessee was permitted to raise the additional ground in similar circumstances. For the reasons stated therein, the assessee in the present case is permitted to raise the following ground:-

> "That treating sales tax subsidy in the sum of Rs.1,49,65,583/- as Revenue receipt by the authorities below is highly unjustified in as much as such sales tax subsidy received by the appellant was capital in nature and may kindly be so held by the Hon'ble Bench accordingly."

Further it remains a conceded position before us that even on merits, the issue has been answered by this Court in an earlier judgment in

the case **CIT v. Abhishek Industries,** (2006) 286 ITR 1, wherein the same has been answered in favour of the revenue and against the assessee holding that the sales tax subsidy of the kind received by the assessee is a revenue receipt.

The same judgment has been followed in the case of the assessee also for earlier year. For the reasons stated therein, the additional question permitted to the assessee to be raised is answered against the assessee and in favour of the revenue.

The appeal is, accordingly, dismissed.

(Adarsh Kumar Goel)
Judge

November 16, 2006 (Rajesh Bindal)
'gs' Judge